



Phillips Lytle LLP

By Hand Delivery

August 11, 2011

The Honorable Judge Allan L. Gropper
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: In re Awal Bank, BSC – Case Nos. 09-15923 and 10-15518; Charles Russell, LLP, as External Administrator of Awal Bank, BSC (the “Administrator”) v. HSBC Bank USA, National Association (“Bank USA”) - Adv. Pro. No. 11-01535 (the “Adversary Proceeding”)

Dear Judge Gropper:

Reference is made to the Memorandum of Opinion dated August 4, 2011 (the “Opinion”) regarding, among other things, Bank USA's Motions to Dismiss the Chapter 11 Case and the Adversary Proceeding (the “Motions”). On August 9, 2011, counsel to the Administrator circulated a proposed order to Bank USA relating to the Opinion, to which Bank USA provided a few comments that were not accepted by the Administrator¹.

Bank USA requested that the proposed order state that the dismissal of the Motion to Dismiss the Adversary Proceeding be “without prejudice”, to ensure that the Opinion not be deemed as law of the case with respect to dispositive issues in the Adversary Proceeding. Establishment of law of the case based on rulings on a Motion to Dismiss is inappropriate, since any such ruling only addresses the issue of whether the Plaintiff adequately pled a claim on its face. See e.g. Nobel Ins. Co. v. City of New York, 2006 WL 2848121, 4 (S.D.N.Y.2006); In re Montagne, 2010 WL 271347, 5-6

¹ Bank USA had requested that the reference to Section 1107(a) in paragraph 3 of the proposed order be amended to Section 1106(a). After discussion with the Administrator's counsel on this issue, Bank USA no longer objects to this reference to Section 1107(a).



The Honorable Judge Allan L. Gropper
Page 2

(Bkrtcy.D.Vt.2010); McAnaney v. Astoria Financial Corp., 665 F.Supp.2d 132, 141-142 (E.D.N.Y.2009).

The dismissal of Bank USA's Motion to Dismiss the Chapter 11 Case should also be without prejudice, as one of this Court's primary rationales for the denial of the Motion was that the issues raised by Bank USA were not ripe. To the extent that subsequent developments in the Chapter 11 or Chapter 15 case support dismissal of the case, Bank USA should not be prevented from seeking such relief.

For these reasons, Bank USA requests that denial of the Motions be "without prejudice" in the form of order ultimately entered by this Court.

Very truly yours,

Phillips Lytle LLP

By /s/ Allan L. Hill

Allan L. Hill